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EDITORIAL

Compensating Bar Advocates

In 1983, the Legislature enacted a law establishing the Committee for Public Counsel Services to plan, oversee and coordinate the delivery of criminal and certain non-criminal legal services by salaried public counsel, bar advocates and other assigned counsel to individuals who are unable to obtain representation by reason of indigency.

The legislation also required CPCS to establish rates of compensation payable, subject to appropriation, to all counsel who are appointed or assigned to represent indigents within the private counsel division. The law further mandated that such rates be reviewed periodically, but not less than once every two years.

Initial rates set by CPCS in 1984 for bar advocates in Suffolk County for all District Court and Superior Court matters were \$25 an hour for time spent out of court and \$35 an hour for time spent in court. Other counties paid a daily rate. In 1987, uniform rates were established for all counties for all work at the \$25/\$35 level, except for murder cases, which were set at \$50 an hour.

Several years ago, the Legislature funded a modest increase in the rates paid bar advocates to its current level of \$30 an hour for District Court criminal cases, \$39 an hour for mental health and care and protection cases, \$39 an hour for Superior Court cases and \$54 an hour for murder cases.

By any measure, the current rate of compensation paid to private counsel is too low. That was the case in 1984 and remains starkly so in 2000. In 16 years, there has been no effective increase in the rate paid for District Court criminal cases and only a mild increase paid for Superior Court and murder cases. However, over that same period, the cost of maintaining a law practice has risen dramatically.

For those lawyers who depend a great deal on

bar-advocate income, the current rates are so low as to make it nearly impossible to maintain a healthy practice. Lawyers who take on court-appointed work as an occasional supplement to otherwise busy practices find that the pay rates may not even be high enough to cover overhead expenses. The result is that many fine lawyers are undoubtedly dissuaded from touching these cases.

The work done by bar advocates is unglamorous, often difficult and essential to ensuring equal justice for all criminal defendants. The commonwealth should not value their legal services so much less than the work done by its bond counsel or by other private lawyers retained by various agencies, departments, commissions and authorities.

Lawmakers currently have an opportunity to more fairly compensating bar advocates. The House of Representatives has funded in its FY 2001 budget an increase in the hourly rates paid by CPCS in the amount of \$3 an hour for District and Superior court cases and \$6 an hour for murder cases.

Such an increase would be less than that sought by CPCS, and far less than that suggested in the 1994 Massachusetts Bar Association's Report on Criminal Justice Attorney Compensation. Nevertheless, the proposal at least acknowledges that the current rates are too low and would be a small step in the right direction. The Senate and the governor should follow suit and approve this much-deserved increase.

Even if the measure is enacted, however, bar-advocate compensation will still be insufficient. The bar should therefore endeavor to keep the issue alive by further investigating ways that the system be reformed to ensure that qualified lawyers aren't forced to turn down court-appointed work.

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